IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 535 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANUBHAI R SHRIMALI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
Mr. VIPUL MISTRY, Asst. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/04/2007

ORAL JUDGMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction

quashing and setting the aside the order of dismissal as confirmed by the higher authorities. He has also further prayed to reinstate the petitioner in service with all consequential benefits. The only contention which was raised on behalf of the petitioner is that the impugned order was passed on the basis of the order of conviction passed by the competent Criminal Court however against the order of conviction the petitioner has preferred Criminal Appeal before this Court which was pending and therefore in view of the pendency of the criminal appeal the order of dismissal could not have been passed.

2. Shri Vipul Mistry, learned A.G.P. has submitted that the aforesaid ground cannot be made the basis for challenging the order of dismissal now as even the appeal preferred by the petitioner against the order of conviction has been dismissed by this Court. He has also further submitted that even otherwise the question whether during the pendency of the

Criminal Appeal against the order of conviction the petitioner could have been dismissed or not is already covered by the decision of the Hon'ble Supreme Court in the case of ***K.C. Sareen Vs. C.B.I., Chandigarh***, reported in **AIR 2001 S.C. Page 3320,** and the decision of the Full Bench of this Court in the case of **P.D*. Waghela & Others vs. G.C. Raiger, Deputy I.G.P. & Others,*** reported in ***1994 (1) G.L.R. Page 240.*** Considering the above the subsequent development, i.e., dismissal of the Criminal Appeal against the order of conviction, the conviction on behalf of the petitioner would not survive. Even otherwise, considering the decisions of the Hon'ble Supreme Court and the Full Bench of this Court as stated above, the present Special Civil Application is required to be dismissed.

3. For the reasons stated above, the petition fails. Rule is discharged. There shall be no order as to costs.

Rmr. [M.R. Shah, J.]